

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

800 ADEPT, INC.	§	
	Plaintiff	§
		§
		§
V.	§	No. 5:07CV57
	§	
	§	
ENTERPRISE RENT-A-CAR, COMPANY, ET AL.	§	
	§	
	Defendants	§

MEMORANDUM ORDER

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. Defendant Patriot Communications LLC (“Patriot”) filed objections to the Report and Recommendation. The Court conducted a *de novo* review of the Magistrate Judge’s findings and conclusions.

BACKGROUND

Plaintiff 800 Adept, Inc. (“Plaintiff”) accuses Patriot of infringing U.S. Patent Nos. 5,805,689 and Re 36,111 (collectively the “patents in suit”), both directed at a geographically mapped telephone routing method and system. Patriot moved to dismiss the First Amended Complaint filed against it, pursuant to Federal Rule of Civil Procedure 12(b)(3) for lack of proper venue. Patriot asserts it does not reside in this district for purposes of 28 U.S.C. § 1400.

REPORT AND RECOMMENDATION

On January 7, 2008, the Magistrate Judge issued a Report and Recommendation, recommending Patriot’s Motion to Dismiss for Improper Venue (Dkt. No. 171) be denied. On

January 17, 2008, Patriot filed objections to the Report and Recommendation. Patriot objects to the Magistrate Judge's general finding that Plaintiff has met its burden of showing a *prima facie* case that Patriot has requisite contacts to support venue in this district. If the Court adopts the Magistrate Judge's recommendation and denies Patriot's motion, Patriot requests that the disputed factual issues be preserved for trial and that Plaintiff be required to prove conclusively the facts supporting venue.

DE NOVO REVIEW

Even though Patriot relies on evidence showing the it does not actually route calls for its customers, Patriot does not rely on that issue in its objections given the conflicting evidence that was before the Magistrate Judge. Instead, Patriot assumes that it actually routes 1-800 calls for customers and asserts there is no evidence that it does so within this district. According to Patriot, the evidence shows that any alleged Patriot call routing services are performed entirely outside of this district, at facilities in California and Utah.

Patriot further objects to the Magistrate Judge's finding that Patriot has put its infringing products and services, including its Enhanced Routing Services, into the stream of commerce by marketing them nationally via its website and through sales representatives like Mr. Haney in Austin, Texas. According to Patriot, there is no evidence that its website is interactive or otherwise used to conduct business in this district. Patriot argues that to the extent that any of Patriot's customers choose to open store locations in this district or to the extent people in this district place calls to 1-800 numbers within this district is beyond Patriot's control and does not constitute purposeful contacts with this district by Patriot.

Finally, Patriot objects to the Magistrate Judge's findings that Patriot has purposefully taken actions knowing that its products and services will be used in an infringing manner within the

Eastern District. According to Patriot, the evidence shows that any alleged infringement occurs outside of this district. Patriot asserts the evidence shows that Patriot's alleged call routing services are not Patriot's objections are without merit. In short, Patriot asserts its amenability to suit in this district does not depend on Patriot's own conduct or choices but depends entirely on unilateral conduct and choices of others, over which Patriot has no control.

The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. However, as alternatively requested by Patriot, the Court will preserve the disputed factual issues for trial and require that Plaintiff prove conclusively the facts supporting venue. Accordingly, it is hereby

ORDERED that Defendant Patriot Communications LLC's Motion to Dismiss for Improper Venue (Dkt. No. 171) is hereby **DENIED**.

SIGNED this 11th day of February, 2008.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE